

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WAYNE RICHARD KNAPP,

Petitioner,

v.

PATRICK GLEBE,

Respondent.

CASE NO. C14-5602 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION, DISMISSING
CASE, AND DENYING A
CERTIFICATE OF
APPEALABILITY

This matter comes before the court on the Report and Recommendation of the Magistrate Judge. Dkt. 13. The court has considered the relevant documents, including petitioner's objections (Dkt. 14), and the remainder of the file herein.

On November 19, 2014, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, recommending that petitioner's petition for writ of habeas corpus be dismissed with prejudice as time barred under 28 U.S.C. § 2244(d). Dkt. 13. On December 2, 2014, petitioner filed objections to the Report and Recommendation, arguing that the court should not dismiss the petition as time barred because petitioner has shown actual prejudice that resulted in violation of federal law and because failure to review petitioner's claim would result in a fundamental miscarriage of justice. Dkt. 14. Petitioner also requested that the court issue a Certificate of Appealability. *Id.*

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1 In his objections, petitioner argues that his claims should not be procedurally barred
2 because his claim that the prosecutor used an apparently altered booking photograph at trial has
3 only been recently deemed as prosecutorial misconduct; and because petitioner has shown a
4 fundamental miscarriage of justice when the prosecutor shifted the burden of proof. Dkt. 14.

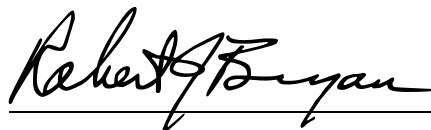
5 Petitioner's objections are without merit. At issue in this case is whether the petition for
6 writ of habeas corpus is time barred under 28 U.S.C. § 2244(d). Petitioner did not file this case
7 within the limitations period prescribed in 28 U.S.C. § 2244(d). Further, petitioner has not
8 shown any basis for equitable tolling. The petition for writ of habeas corpus should be dismissed
9 as time barred under 28 U.S.C. § 2244(d).

10 As discussed in the Report and Recommendation, a Certificate of Appealability should be
11 denied because petitioner has not made a showing of the denial of a constitutional right, as
12 required by 28 U.S.C. § 2253(c)(2).

13 Accordingly, it is hereby **ORDERED** that the court **ADOPTS** the Report and
14 Recommendation of the magistrate Judge (Dkt. 13). The petition for writ of habeas corpus is
15 **DISMISSED WITH PREJUDICE**. A Certificate of Appealability is **DENIED**. Other than a
16 Notice of Appeal, any document petitioner files in this case in the future will be docketed by the
17 Clerk but will not be acted upon by the court.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
19 to any party appearing *pro se* at said party's last known address.

20 Dated this 5th day of December, 2014.

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23 ROBERT J. BRYAN
24 United States District Judge